



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34569492

Date: OCT. 30, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a management consulting firm, seeks to classify the Beneficiary as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that although the Beneficiary satisfied at least three of the initial evidentiary criteria, as required, the Petitioner did not show the Beneficiary's sustained national or international acclaim and demonstrate he is among the small percentage at the very top of the field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not claimed or established the Beneficiary’s receipt of a major, internationally recognized award, the Beneficiary must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director determined the Beneficiary met three of the claimed evidentiary criteria relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). However, the Director concluded the Petitioner did not show the Beneficiary garnered sustained national or international acclaim and his achievements have been recognized in the field of endeavor, demonstrating he is one of that small percentage who has risen to the very top of the field.

On appeal, the Petitioner argues the Beneficiary satisfies three additional criteria, and the evidence in the aggregate establishes the Beneficiary’s eligibility as an individual of extraordinary ability. Because the Petitioner has already shown the Beneficiary fulfills the minimum requirements of at least three criteria, we will evaluate the totality of the evidence based on the documentation presented to the Director in the context of the final merits determination below.¹

B. Final Merits Determination

As indicated above, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary’s sustained national or international acclaim,² he is one of the small percentage at the very top of the field of endeavor, and his achievements have been recognized in the

¹ *See* 6 *USCIS Policy Manual* F.2(B)(2), <https://www.uscis.gov/policymanual>.

² *See* 6 *USCIS Policy Manual*, *supra*, at F.2(A)(1) (stating that such acclaim must be maintained and providing *Black’s Law Dictionary’s* definition of “sustain” is “to support or maintain, especially over a long period of time . . . To persist in making (an effort) over a long period of time”).

field through extensive documentation. In a final merits determination, we analyze an individual's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.³ In this matter, we determine the Petitioner has not shown the Beneficiary's eligibility.

The record reflects the Beneficiary received a bachelor's degree in electronics and communication engineering from [REDACTED] in 2010. According to the Beneficiary's résumé, the Beneficiary has been employed by the Petitioner as a director and associate partner since 2018 and previously worked for [REDACTED] as a director and chief architect and strategist from 2013 – 2018 and [REDACTED] as a senior enterprise architect from 2011 – 2013. As discussed further below, the Beneficiary has served on committees, conducted review work, made contributions to his employers, authored material, performed in authoritative roles, and earned salaries for his work. However, in considering the totality of the evidence, the Petitioner has not demonstrated that the Beneficiary's achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Furthermore, the Petitioner has not shown that the Beneficiary has risen to that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Here, the Petitioner has not established that the Beneficiary enjoys a career that meets this very high standard.

The Petitioner presented evidence of the Beneficiary's recent membership on an evaluation committee for [REDACTED].⁴ However, the Petitioner did not show the Beneficiary's service resulted in sustained national or international acclaim or reflects "that small percentage who [has] risen to the very top of the field of endeavor." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2) and (3). The record, for instance, does not contain evidence showing that the Beneficiary received national or international recognition based on his membership or service with this committee. Furthermore, the Petitioner did not establish that the Beneficiary distinguished himself from others in the field based on his [REDACTED] service, gaining national or international attention or placing him among the upper echelon in his field. Although the Petitioner points to Y-L-, who serves on the selection committee for [REDACTED] and indicates he "is well known and pioneer," the issue is whether the Beneficiary garnered national or international acclaim rather than the reputation of his co-workers or "many other established leaders in the industry."⁵

³ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (instructing that USCIS officers should consider the petition in its entirety to determine eligibility according to the standard – sustained national or international acclaim and the achievements have been recognized in the field of expertise, indicating that the person is one of that small percentage who has risen to the very top of the field of endeavor).

⁴ Initially, the Petitioner also claimed the Beneficiary "was invited to join and participated as a member on the evaluation committee for the [REDACTED] industry for [REDACTED] 2013." Although the Petitioner provided an invitation email, the Petitioner did not show the Beneficiary actually attended and participated at the event.

⁵ *See* R-S- letter. In fact, based on the evidence provided about Y-L-, the record reflects that Y-L-'s accomplishments and achievements are at a significantly, considerably higher level than the Beneficiary.

Similarly, regarding the Beneficiary's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this highly restrictive classification. *See Kazarian*, 596 F. 3d at 1121-22. Besides the Beneficiary's evaluation committee experience, the Petitioner submitted evidence of the Beneficiary's instance of reviewing chapters for a book in 2013. Here, the Petitioner did not establish that the Beneficiary's judging instances contributed to a finding that the Beneficiary has a career of acclaimed work in the field or indicative of the required sustained national or international acclaim. *See* H.R. Rep. No. 101-723 at 59 and section 203(b)(1)(A) of the Act.

The Petitioner did not show, for example, how the Beneficiary's recent experience serving on an evaluation committee and reviewing book chapters over 10 years ago compares to others at the very top of the field. In addition, the Petitioner did not establish, for instance, that the Beneficiary garnered wide attention from the field based on his evaluation work. Moreover, serving as a committee evaluator or book reviewer does not automatically demonstrate that an individual has extraordinary ability and sustained national or international acclaim at the very top of his field. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (stating that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Without evidence that sets the Beneficiary apart from others in his field, such as evidence that he has a consistent history of reviewing or judging recognized, acclaimed experts in his field, the Petitioner has not shown that the Beneficiary's narrow judging experience places him among that small percentage who has risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Likewise, authorship and publication do not automatically place one at the top of the field. The record reflects the Petitioner presented evidence showing that the Beneficiary authored one article in 2019. However, the Petitioner did not demonstrate the Beneficiary's publication record is consistent with having a career of acclaimed work, sustaining national or international acclaim, and being among the small percentage at the very top of his field. *See* H.R. Rep. No. at 59, section 203(b)(1)(A) of the Act, and 8 C.F.R. § 204.5(h)(2). The Petitioner, for instance, did not show the significance of the Beneficiary's authorship or how his publication record of a single article compares to others who are viewed to be at the very top of the field.⁶

Moreover, the citation history or other evidence of the influence of written work can be an indicator to determine the impact and recognition that his publication has had on the field and whether such influence has been sustained. For example, numerous independent citations for an article authored by the Beneficiary may provide solid evidence that his work has been recognized and that others have been influenced by his work. Such an analysis at the final merits determination stage is appropriate pursuant to *Kazarian*, 596 F. 3d at 1122. Although the Petitioner provided evidence of some citations of his article, the Petitioner did not demonstrate the significance or relevance of having been cited 76 times.⁷ For instance, the Petitioner did not compare the Beneficiary's numbers to those among the very top of the field or to show the Beneficiary's work received a level of interest in the field

⁶ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing that an example where evidence in the record may help in determining whether in a totality analysis that considers all of the evidence, the person is among the small percentage at the top of the field and has sustained national or international acclaim).

⁷ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (indicating that the petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise).

commensurate with sustained national or international acclaim.⁸ *See* section 203(b)(1)(A) of the Act. In addition, the Petitioner did not establish that the Beneficiary's metrics represent attention at a level consistent with being among that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

In addition, the Petitioner provided an invitation email for the Beneficiary to speak at [REDACTED] [REDACTED] 2023 without showing that the Beneficiary actually participated or spoke at the event. Regardless, the Petitioner did not establish the Beneficiary's purported speaking engagement garnered any national or international acclaim. *See* section 203(b)(1)(A) of the Act. Moreover, the Petitioner did not demonstrate the significance of the Beneficiary's purported presentation or how it impacted the field consistent with a very high standard requiring the petitioner to submit more extensive documentation than that required for lesser classifications. *See* 56 Fed. Reg. at 30704. In fact, the Petitioner presented two identical articles reporting on the event without any mention of the Beneficiary or his presentation.

Furthermore, the Petitioner provided several recommendation letters, including letters from the Petitioner, praising the Beneficiary and his work, especially his involvement with the [REDACTED] methodology. For instance, D-K-S- stated that [REDACTED] "yielded remarkable results" and "has since been adopted as an industry standard for in-place core modernization, not only in the US but also in APAC and ANZ regions."⁹ However, they do not contain sufficient information and explanation to show that he is viewed by the overall field, rather than by a solicited few, among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. Moreover, although the letters indicate the Beneficiary has made an impactful contribution in the field, they do not reflect a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See* H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Likewise, the letters do not establish his roles with the Petitioner, [REDACTED] or any other organization resulted in widespread acclaim from the field, that he drew significant attention from the greater field, or that the overall field considers him to be at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

Finally, although the Petitioner documented the Beneficiary's salary, the Petitioner did not establish that the Beneficiary commanded earnings commensurate with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The Petitioner did not show that the Beneficiary's wages are tantamount to an individual who is among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). The Petitioner did not demonstrate, for example, how the Beneficiary's salary as a partner in a management consulting firm compared to others at the very top of the field or other renowned partners, or that the Beneficiary received notoriety or attention based on his earnings separating himself from others in the field or placing him in the upper echelon.¹⁰

⁸ We note that Y-L- has garnered at least 354,653 cumulative citations, including his highest cited [REDACTED] article of 79,354, compared to the Beneficiary's 76.

⁹ Although we reference a sample letter, we have reviewed and considered the approximately dozen other recommendation letters in the record.

¹⁰ The Petitioner compared the Beneficiary's salary as a partner to management consultants rather than to other partners.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought.¹¹ Here, the Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). In this case, the Petitioner has not shown the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. *See* H.R. Rep. No. at 59; *see also* section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that the Beneficiary is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

¹¹ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing that while a person may be stronger in one particular evidentiary area than in others, the totality of the evidence must establish that the person is extraordinary).